

**Iowa Department of Natural Resources  
Environmental Protection Commission**

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**ITEM**

**7**

**DECISION**

**TOPIC**

**Referrals to the Attorney General**

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The Director requests the referral of the following to the Attorney General for appropriate legal action. Litigation reports have been provided to the commissioners and are confidential pursuant to Iowa Code section 22.7(4). The parties have been informed of this action and may appear to discuss this matter. If the Commission needs to discuss strategy with counsel on any matter where the disclosure of matters discussed would be likely to prejudice or disadvantage its position in litigation, the Commission may go into closed session pursuant to Iowa Code section 21.5(1)(c).

- Kyle Dudden (Grundy County) – Animal Feeding Operation

Edmund J. Tormey, Chief  
Legal Services Bureau

September 22, 2008

## **LITIGATION REPORT**

**Prepared by: Kelli Book**  
**Date: September 22, 2008**

### **I. Alleged Violator**

Kyle Dudden  
21409 V Avenue  
Reinbeck, Iowa 50699

### **II. Description of Facility**

Mr. Dudden owns and operates a confined animal feeding operation located at 27644 170<sup>th</sup> Street in rural Dike, Iowa (Section 11, Lincoln Township, Grundy County). The facility consists of 2,000 head swine finishers (800 animal units).

### **III. Alleged Violations (including facts and applicable law)**

The manure management plan (MMP) is a crucial aspect of the DNR's animal feeding operation program. The MMP ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to crop land at an agronomic rate in order to prevent over application of manure.

#### **A. FACTS**

Kyle Dudden failed to submit a complete MMP update and proper fees by July 1, 2008. On May 15, 2008, DNR Field Office 2 sent Mr. Dudden a notice of the requirements stating that the complete MMP update and compliance fees must be submitted to the field office by July 1, 2008. On July 11, 2008, DNR Field Office 2 issued a Notice of Violation letter to Mr. Dudden for failing to submit the MMP update and fees by July 1, 2008. The letter informed Mr. Dudden that the MMP update and fees must be submitted by July 31, 2008 to avoid further enforcement and penalty. On August 14, 2008, DNR Field Office 2 sent Mr. Dudden a notice of referral stating that the violations were being referred for further enforcement. To date, Mr. Dudden has not submitted the MMP update and fees for 2008. Mr. Dudden has continued to fail to submit a Phosphorus Index MMP.

#### **B. APPLICABLE LAW**

Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations. The Commission has adopted such rules at 567 Iowa Administrative Code (IAC) chapter 65.

567 IAC 65.16(3)"b" and "c" requires that all persons required to submit a MMP also submit an updated MMP and compliance fees on an annual basis. The compliance fee is fifteen cents per animal unit. Mr. Dudden failed to submit an updated MMP and compliance fees by July 1, 2008 and to date has not submitted the updated MMP or the compliance fees. Mr. Dudden's compliance fee is \$120.00.

Iowa Code sections 459.603 and 455B.191(4) authorize the Attorney General to institute legal proceedings necessary to secure enforcement of the water quality provisions of the law. 455B.191(1) authorizes civil penalties of up to \$5,000 per day of violation of statutory provisions or DNR rules. Iowa Code section 455B.191(2) authorizes more serious criminal sanctions for negligent or knowing violations.

#### **IV. Past History and Other Violations**

Mr. Dudden failed to timely submit the MMP updates and compliance fees for 2006 and 2007. On May 8, 2006, DNR Field Office 2 sent a notice of the MMP requirements to Mr. Dudden and reminded him that his MMP update and fees were due July 1, 2006. On July 11, 2006, DNR Field Office 2 issued a Notice of Violation letter to Mr. Dudden for failing to submit the MMP update and fees by July 1, 2006. On August 10, 2006, DNR Field Office 2 issued another Notice of Violation letter to Mr. Dudden for failing to submit the MMP update and fees by July 1, 2006. On September 12, 2006, DNR Field Office 2 received Mr. Dudden's MMP update and fees for 2006.

On May 15, 2007, DNR Field Office 2 sent a notice of the MMP requirements to Mr. Dudden and reminded him that his MMP update and fees were due July 1, 2007. On July 11, 2007, DNR Field Office 2 issued a Notice of Violation letter to Mr. Dudden for failing to submit the MMP update and fees by July 1, 2007. On August 17, 2007, DNR Field Office 2 sent a notice of referral to Mr. Dudden. On December 10, 2007, the DNR and Mr. Dudden entered into Administrative Consent Order No. 2007-AFO-38 for failing to submit a timely MMP update and fees. The Administrative Consent Order required that Mr. Dudden submit a complete MMP update and fees to DNR Field Office 2 and to pay a \$3,000.00 penalty. In February 2008, Mr. Dudden paid the penalty and submitted the compliance fees to DNR Field Office 2. The MMP update submitted was considered incomplete and was submitted on the 2005 forms. The update failed to include a complete Phosphorus Index MMP; only a partial Phosphorus Index MMP was submitted. This is a violation of the Administrative Consent Order since Mr. Dudden failed to submit a complete MMP with the Phosphorus Index.

In addition to the MMP update violations, DNR Field Office 2 has discovered other environmental violations at another facility Mr. Dudden operates. On April 15, 2008, DNR Field Office 2 personnel visited Mr. Dudden's farrowing site located at 29148 160<sup>th</sup> Street in rural Dike, Iowa (NW ¼, Section 6, Grant Township, Grundy County) and discovered improper solid waste disposal and open burning. DNR Field Office 2 personnel observed a large pile of solid waste from the confinement building, and the site operator indicated that the solid waste had always been burned on site. Additionally, DNR Field Office 2 personnel noted that the concrete manure storage tank did not have

adequate freeboard. There was only 2-3 inches of freeboard and one foot of freeboard was required. On April 22, 2008, DNR Field Office 2 issued a Notice of Violation letter to Mr. Dudden for the improper solid waste disposal, open burning, and freeboard violations observed during the April 15 visit.

**V. Witnesses**

Dale Adams, DNR Field Office 2 environmental specialist, will be DNR's potential witness. Mr. Adams will be available during the October 14, 2008 EPC meeting to answer additional questions.